

The facts upon which we shall rely in this brief are properly before this Court under one or more of the branches of the above statement.

### III.

A. By the criteria applied by the Commission, the Debtor was insolvent when the Commission rendered its reports herein. Applying the same criteria at this time, the Debtor is solvent by a substantial margin. This is true because the sum of (1) the value of the Debtor's property as found by the Commission, (2) increase in net current assets after the Commission's reports, (represented by cash and Government securities), and (3) other Government obligations so accumulated, now exceed the sum of all the Debtor's liabilities. If the increase in other valuable assets occurring after the Commission's reports are also considered, the present margin of solvency is even greater.

B. The restoration of Debtor's solvency was caused by phenomenal earnings of the Debtor, occurring after the Commission's reports and not anticipated by the Commission.

C. The great change in the financial condition of the Debtor has been reflected in the increase in the prices of the Debtor's securities. Five- and six-fold increases in the prices of the Debtor's junior bonds subsequent to the Commission's reports corroborate the appellant's view that the financial situation of the Debtor has changed completely since the Commission's reports.

### IV.

Where the sum of a debtor's railroad properties as valued by the Commission and its accumulation of cash or the equivalent exceed its known liabilities, the Commission will not find and a court will not affirm a finding that the corporation is insolvent or that the equity of the stockholders has no value but, to the contrary, recognition will

be given in a plan of reorganization to the stock interests. This test has been stated by the Commission and by the courts. Where the assets were sufficient for that purpose, stock interests have been recognized in Section 77 reorganizations of railroads. There is nothing in *Northern Pacific Ry. Co. v. Boyd*, 228 U. S. 482, *Kansas City Terminal Ry. Co. v. Central Union Trust Co.*, 271 U. S. 445, *Case v. Los Angeles Lumber Co.*, 308 U. S. 106, *Consolidated Rock Co. v. Du Bois*, 312 U. S. 510, *Ecker v. Western Pacific R. Corp.*, *supra*, *Group of Investors v. Milwaukee R. Co.*, *supra*, or any other authoritative decision, which prevents the recognition of stockholder interests in a railroad undergoing reorganization where the assets at a fair valuation exceed the liabilities.

#### V.

No sound reason may be advanced for ignoring the present solvent condition of the Debtor. Arguments by appellees to this effect will be found upon examination to be inadmissible attacks upon the findings of the Commission, as to the value of the Debtor's properties at the time of such valuation, or as to the extent of Debtor's liabilities, or to be without factual foundation.

#### VI.

The gain in assets, earnings and prospects of the Debtor has been exceptional and well ahead of the average of the industry. A line of demarcation has been drawn by the Commission and courts in regard to solvency or insolvency of railroads in reorganization, and many railroads have been found to fall short of solvency. These decisions, upon different fact situations, are not inconsistent with finding the Debtor to be solvent, upon its fact situation, so long as the same standard of solvency is applied. In none of the Section 77 railroad reorganizations decided by the United States Supreme Court or a Circuit Court of Appeals has the appellate court dealt with a railroad which was solvent at the time of its decision.

## APPENDIX B

**Statement showing changes in interest rates reflected by recent refinancings of railway lien indebtedness.**

<i>Name</i>	<i>Date of Refinancing</i>	<i>Interest rate of old issue</i>	<i>Interest rate of new issue</i>
	Aug 1-		
Chicago, Burlington and Quincy RR. Co.	Dec. 1, 1944	4-5%	3½% 1½% 3¾%
Chicago Union Station Company	July 1, 1944	3¾%	2⅞%
Erie Railroad Company	Oct. 1, 1944	3¾-4%	3¼%
Great Northern Railway Company	July 1, 1944	4-4¼%	3⅛-3½%
Louisville and Nashville Railroad Company	Oct. 1, 1944	3½-5½%	3⅜%
Pennsylvania Railroad Company	Jan. 1, 1945	4½%	3⅛%
Pere Marquette Railroad Company	Mar. 1, 1945	4-5%	3⅜%
Union Pacific Railroad Company	Oct. 1, 1944	4%	3%
Wabash Railroad Company	Feb. 1, 1945	4%	3¼%
Washington Terminal Company	Feb. 1, 1945	3½-4%	2⅝%

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**Supreme Court of the United States**

OCTOBER TERM 1944

No. 907

IN THE MATTER

of

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD  
COMPANY,

*Debtor.*

DARRAGH A. PARK, as Chairman of a Group of Holders of  
Adjustment Mortgage Bonds,

*Petitioner,*

*vs.*

GROUP OF INSTITUTIONAL INVESTORS AND MUTUAL SAVINGS  
BANK GROUP, and others,

*Respondents.*

**MOTION FOR LEAVE TO FILE OUT OF TIME  
UNDER RULE 33 OF THE RULES OF THE  
SUPREME COURT**

*To the Honorable the Chief Justice and the Associate  
Justices of the Supreme Court of the United States:*

Pursuant to Rule 33 of the Rules of the Supreme Court the Petitioner hereby applies for leave to file the annexed Petition for rehearing notwithstanding the expiration of the twenty-five day period prescribed in Rule 33 of the Rules of this Court. The reason why the Petition for rehearing was not filed within that period is that the decision of the United States Circuit Court of Appeals in the Tenth Circuit referred to in said Petition was not released until after that period had expired and the Petitioner was not informed until June 6, 1945 that a Petition for *certiorari* would be filed in that proceeding.

Respectfully submitted,

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*Attorney for Darragh A. Park, as  
Chairman of a Group of Holders  
of the Debtor's Adjustment Mort-  
gage Bonds,*

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June 7, 1945.

Office - Supreme Court, U. S.

FILED

JUN 8 1945

CHARLES ELMORE BROOKS  
CLERK